IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 103 OF 2002

Shivshankar Singh Ramjitsingh Thakur)
@ Narayansingh Shivprasad Thakur)
Convict No. C/11899, presently lodged at)
Yerawada Central Prison, Pune, Maharashtra)..Appellant

Versus

The State of Maharashtra ...Respondent

Shri D.G. Khamkar for the appellant.
Smt. P.H. Kantharia, Additional Public Prosecutor, for the State.

CORAM: **V.G. PALSHIKAR, Ag. C.J., &**
SMT. NISHITA MHATRE, J.

DATE: **AUGUST 24, 2006**.

ORAL JUDGMENT (Per Palshikar, Ag. C.J.)

Being aggrieved by the judgment and order of conviction passed in Sessions Case No. 100 of 1998, by the Additional Sessions Judge, Kalyan, convicting the appellant to suffer imprisonment for life under Section 302 of the Indian Penal Code, the appellant above named has filed this appeal on the grounds mentioned in the memo of appeal as also rulings canvassed before us at the time of hearing of this appeal.

2. With the assistance of the learned advocate for the appellant and the Additional Public Prosecutor, we have scrutinised the record and re-appreciated the entire evidence on record. The prosecution case as disclosed by re-appreciation of evidence, stated briefly, is as under.

3. The victims were two women directly related to the accused, one being his wife and second being his daughter. Both the wife and the child were killed in cold blood by the accused whose moral and social responsibility was to protect and provide for them throughout their life.

4. The relationship of the husband and wife was far from happy. As a natural consequence of such unhappy relationship, there was frequent quarrelling between the two. In the night of 15th and 16th June, 1997, one such quarrels took place which drove the accused to commit murder of his wife and child having planned to do so earlier. The had administered baygon insecticide to both the victims by mixing it with cough syrup. It was not enough to kill the wife. Therefore, he completed the act by stabbing her to death. The five year old daughter died due to asphyxia. The bodies were thrown out by the accused in

the Nehru Maidan, Dombivli (West) where they were discovered by one of prosecution witnesses. Complaint was lodged at the Dombivli Police Station. Police investigation was carried out during which the needle of suspicion pointed out unerringly to the accused and, therefore, he was arrested. On completion of the investigation, charge-sheet was filed. The accused, present appellant, was charged of having committed murder of his wife and his daughter. The prosecution has examined as many as ten witnesses to prove its case and the learned trial Judge on marshaling of the evidence on record, both documentary and oral, came to the conclusion that the accused was guilty of the offences with which he was charged. He, therefore, proceeded to sentence him to suffer imprisonment for life. It is this judgment and order of conviction and sentence which is impugned in this appeal.

5. Shri D.G.Khamkar, learned advocate appointed to defend the accused, as he is pauper, pointed out that the entire evidence on which the conviction is based is circumstantial and the learned trial Judge committed basic legal errors in accepting the circumstantial evidence in toto. According to the learned counsel, the chain of circumstantial evidence was not complete, several links were missing and, therefore, relating on the judgment of the Supreme Court in different cases, he

contended that the order of conviction and sentence as passed by the learned Sessions Judge is unsustainable in law.

6. These submissions were stoutly refuted by the learned Additional Public Prosecutor who pointed out by taking us through the evidence that each link in the chain of circumstances was duly proved and, therefore, there is no error, factual or legal, committed by the learned trial Judge in recording the order of conviction. We have to appreciate these rival contentions in the light of re-appreciated evidence and scrutiny of record which we undertook during hearing of this appeal.

7. Ravikant Mahadeo Kadam (P.W.1), a barber on 16th June, 1997 around 8.15 in the morning discovered two dead bodies in Nehru Maidan at Dombivli and reported the matter to the Police. The First Information Report is recorded on his statement in which he had disclosed the names of the victims but in his deposition in the Court he fails to mention these names. The learned counsel appearing on behalf of the appellant, therefore, used this omission and claimed it to be a material suggesting thereby that the first link in the chain of circumstances itself was weak and could not have been relied upon by

the learned trial Judge.

8. Snehalata Kamlakar Gadhe (P.W.2) is a panch who was present at the time when the inquest panchanama of the dead bodies was made. He has signed the panchanama in witness whereof. He has proved the same in the Court. The inquest panchanama discloses the injuries on the person of the victims. There is nothing in the testimony of this witness which would impeach his credibility. Consequently, the inquest panchanama proves the fact that the victims were found in Nehru Maidan with bodily injuries on their person. The discovery of dead bodies by P.W.1 is thus corroborated by the inquest panchanama proved on record by P.W.2.

8. Ramu Shilla Petekar (P.W.3) is a panch witness who was present at the time when the house of the accused was searched. During the search, according to this witness, a medicine bottle was found. A quilt in a stained condition smelling of vomit was found and both the bottle and the quilt were seized by seizure panchanama. He has deposed that he was factually present when this search took place of medicine bottle and foul smelling of quilt. The prosecution has thus proved recovery of incriminating material from the house of the accused

which is yet another link in the chain of circumstances which the prosecution has successfully proved.

9. Yogesh Ganesh Khare (P.W.4) is a Salesman in a medical shop. He has proved that the accused has, a day earlier, purchased baygon spray from his shop. He identified the accused as also the receipt/bill for baygon spray issued by the shop where he was working. He has not been shaken in any manner by his cross-examination. This witness, therefore, proves the next link in the chain viz. purchase of baygon spray by the accused on 15th June, 1997.

10. The next chain of circumstances proved by evidence of Gokuldas Nagesh Prabhu (P.W.5) who also worked in the medical shop and sold cough syrup to the accused. He also proved the bill given to the accused showing the purchase of this cough syrup. The prosecution has thus proved that the accused did on 15th June, 1997 purchase baygon spray and cough syrup from the shops where P.W.4 and P.W.5 were employed as Salesmen.

11. Dr. Saundermal Kishor Satwajirao (P.W.6) is the doctor who conducted the post-mortem on the dead bodies of the unfortunate victims. He has deposed that death of both the victims was homicidal

in nature. He has proved the injuries caused by knife on the person of the victim-wife. He has also deposed about the death of child. He has clearly deposed in para 3 of his testimony that the cause of death of the wife was hemorrhagic shock due to cut throat and baygon poisoning. In the next paragraph he has deposed that the child died due to asphyxia. The prosecution had sent for chemical analysis the viscera of the victim-child as also the mother and the report of the Chemical Analyser was duly proved. In this report it is clearly stated that in the viscera poison was found and it was identified to be baygon. Thus from the evidence of P.W.6, the doctor who had conducted the post-mortem and the report of analysis of viscera where existence of baygon spray poison was found, the prosecution has proved the next link in the chain.

12. P.W.7, P.W.8 and P.W.9 are not of much consequence. P.W. 7 has turned hostile. Even otherwise, his evidence was not of any material point or was not pertaining to anything which can be called a link in the chain of circumstances. Dilip P. Kotkar (P.W.8) is a panch witness who has proved the panchanama. Indumati N. Tekde (P.W.9) deposes to the quarrels and tendency of the accused and P.W.10 is the Investigating Officer who proved that receipts of purchase of baygon

spray and cough syrup were found in the pocket of the accused which he was wearing at the time of arrest. The fact that these items were purchased by him from the medical shop where P.W.4 and P.W.5 were working and have proved the purchase which is substantially corroborated by factual recovery of the receipts from the pocket of the accused. It forms yet another link in the chain of circumstances. The recovery of knife and tin of baygon spray and a bottle of cough syrup is duly proved by the panchanamas. There is nothing in the evidence leading to recovery of the articles which require the evidence to be rejected. That being so, the prosecution has proved that not only baygon spray and cough syrup was purchased by the accused but it was used by him in his house. Similar is the proof with regard to the existence of the knife. It is on the basis of these circumstances that the learned trial Judge came to the conclusion of guilt.

13. In our opinion, therefore, the prosecution has proved every link in the chain of circumstances relying on which the order of conviction was recorded by the learned trial Judge and re-appreciating the same we confirm the findings recorded by the learned trial Judge. We have scrutinised the case law on which reliance was placed by the learned advocate for the accused, none of which is having any bearing

on the circumstances involving the present case nor any concrete proposition of law flowing from those judgments is applicable in the present case. We do not deem it necessary, therefore, to deal with each case cited at the Bar. In our opinion, the appreciation of circumstantial evidence by the learned trial judge was proper. His marshaling of the evidence was very good. he has recorded clear findings on each issues involved. We endorse the findings and further record our findings to the similar effect. The appeal, in the circumstances, fails and is accordingly dismissed.